Supreme Court of the United States.

OCTOBER TERM, 1953.

No. 404.

ALICE D. JACOBSON, ADMINISTRATRIX,
Petitioner,
v.
NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

The petitioner seeks a writ of certiorari to review a judgment of the United States Court of Appeals for the First Circuit affirming a judgment for dismissal entered in the United States District Court for the District of Massachusetts on January 19, 1953 (R. 10). The opinion of the United States Court of Appeals is reported, *Jacobson* v. *New York, New Haven & Hartford Railroad Co.*, 206 F. (2d) 153, and that of the District Court, 109 Fed. Supp. 513.

In the original complaint (R. 1) the petitioner alleged that she was a resident of Melrose, Massachusetts, and that her intestate was also a resident of Melrose, Massachusetts, and that the respondent was a corporation organized under the laws of the State of Connecticut. It is also alleged that at the time of the accident the intestate was a passenger. There were two counts in the complaint, one

for death presumably under the Massachusetts Death Statute, although it is not so alleged, nor does the place of the alleged accident appear. The other count was for conscious suffering. The respondent filed a motion to dismiss (R. 3), in which it was admitted that the respondent is incorporated in Connecticut, but pleaded that diversity is lacking because the respondent is also a corporation organized under the laws of the Commonwealth of Massachusetts. This motion was denied (R. 3) for "reasons fully stated in *Gavin* v. *Hudson & Manhattan Ry. Co.*, 185 Fed. (2) 104."

On August 8, 1952, the defendant moved that the Court revoke its order on the previous motion to dismiss and enter an order dismissing the case for lack of jurisdiction (R. 4). In this motion the Court's attention was called to *Seavey* v. *B. & M. R.R.*, 197 F. (2d) 485, which was decided by the United States Court of Appeals for the First Circuit on June 20, 1952. Following a hearing, the Court allowed the foregoing motion to dismiss unless an amendment was filed supporting jurisdiction. On September 30, 1952, the petitioner filed an amended complaint, in which it was alleged that, in addition to diversity of citizenship, jurisdiction was based on the existence of a question under a Federal statute known as the Safety Appliance Act, Title 45 U.S.C. sec. 1 *et seq.* The amended complaint (R. 5) contained allegations as to citizenship identical to those in the original complaint, and further alleged that the petitioner's intestate sustained injuries while a passenger on the respondent's train, and died as a result of the alleged injuries. Several new counts were added, some of which might be construed as being based upon violation of the Safety Appliance Act. The respondent again filed a motion to dismiss on October 10, 1952 (R. 9), and after hearing thereon the judge of the District Court entered judgment for dismissal (R. 10). This judgment was affirmed by the

United States Court of Appeals for the First Circuit (R. 24).

Argument.

Point I.

DIVERSITY OF CITIZENSHIP IS LACKING BECAUSE THE PETITIONER AND THE RESPONDENT ARE BOTH CITIZENS OF MASSACHUSETTS.

The identical problem was succinctly stated in *Lake Shore & M.S. Ry. Co.* v. *Eder*, 174 Fed. 944, 945 (C.C.A. 6, 1909), as follows:

> "When the idea is grasped that whenever a corporation is sued in a state by whose laws it has been created and the question of its citizenship is involved the court will regard the corporation intended as defendant as the one created and existing by the laws of that state, we have the key to the solution of the inquiry."

The petitioner does not dispute the fact that the respondent is a domestic corporation incorporated by Massachusetts, Acts of 1872, c. 171, set forth in the appendix to this brief. It is her contention, however, that the fact that respondent is also incorporated in other states entitles the petitioner to ignore the domestic corporation and sue the respondent as a foreign corporation. Support for this position is found in *Gavin* v. *Hudson & Manhattan R. Co.*, 185 F. (2d) 104 (C.A. 3, 1950). Respondent submits that such support is lacking elsewhere in identical circumstances.

The status of the respondent corporation in Massachusetts has been considered by the Supreme Judicial Court of that State, which definitely decided that it was a domestic corporation in Massachusetts.

Attorney General v. *New York, New Haven, & Hartford Railroad Co.*, 198 Mass. 413.

That case sets forth the history of this corporation and the provisions of the charters of incorporation in both Connecticut and Massachusetts. The respondent here was at that time seeking to avoid certain provisions of Massachusetts law applicable only to domestic corporations in Massachusetts.

At page 417 the Court said:

> "The first question to be considered is whether, by reason of the peculiarities of its organization as a corporation owning and operating a railroad extending into different States, and deriving power and authority from the legislation of different States, it is relieved from the prohibition of the statute. If, without considering other provisions of the charter from Massachusetts or of the charter from Connecticut, we look first at the facts that there was a consolidation of two corporations into a single corporation which was the creature of both States, operating a railroad extending into both, having the same capital stock to cover the property in both States, and electing its officers and managing its business as a single corporation, there is nothing that makes it any more a domestic corporation in one of the States than in the other. It is a foreign corporation in neither of them. It is a domestic corporation in each of them. It is a single corporation in most of its features. In other features it is two corporations acting together as one. It is a single corporation with two parents who live apart and act independently, each having absolute control in his own domain. It owes allegiance and is subject alike to each, and is dependent upon each alike for

> future favors. We are dealing now with a legislative consolidation, or merger, of two corporations, upon equal terms, which this was; and not with mere permission to a corporation of one State to enter another State and acquire property or franchises there."

And further, at pages 422-423:

> "Massachusetts cannot grant this corporation franchises to be enjoyed and exercised in Connecticut, which are contrary to the laws of Connecticut; for the corporation in each State is a domestic corporation, and as such it is governed by the laws of the State of its creation in all that it does within that State. We think it plain that, in the different provisions of the statutes of Massachusetts to which we have referred, the Legislature intended to retain control of the consolidated corporation as a domestic corporation in everything that it might do within this Commonwealth, and that, in recognizing its right to receive franchises and acquire property in Connecticut, it did not give it an implied right to receive any franchise in Connecticut to be enjoyed or exercised in Massachusetts in violation of the laws or public policy of this Commonwealth."

The language of the Massachusetts Court clearly shows that in the State of the forum in this case it has long been settled that the respondent is a domestic corporation. It is submitted that under the doctrine of *Erie Railroad Co.* v. *Tompkins*, 304 U.S. 64, the question of the status of a corporation organized under the laws of the State of the forum is a matter of local law.

It is not necessary, however, to rely on that doctrine, as an examination of the decisions of this Court indicate that

it has always looked to the law of the States to determine the citizenship of corporations organized in more than one State.

The question does not appear to have come before this Court in the identical form presented by the petition in this case. There have, however, been several cases where the Court has considered questions involving jurisdiction over corporations organized in more than one State. These cases indicate that, once it is clearly established that the corporation is in fact domestic in the State of the forum, jurisdiction is either absent or present in the Federal Courts depending on whether or not the opposing party is a citizen of the State of the forum.

As early as 1861, in *Ohio & Mississippi Railroad Co.* v. *Wheeler*, 1 Black, 286, this Court held jurisdiction to be absent in a suit in which a railroad incorporated both in Indiana and in Ohio was suing a citizen of Indiana in a United States Court.

Next, in *Chicago & Northwestern Railway Co.* v. *Whitton*, 13 Wall. 270 (1871), the Court held that a citizen of Illinois could sue in Wisconsin Federal Court a corporation organized both in Illinois and in Wisconsin. The Court pointed out that, strictly speaking, a corporation is not a citizen, but for the purpose of jurisdiction is treated as a citizen of the State which creates it, and that, where a corporation is created by laws of the State in which suit is brought, it is considered a citizen of that State, regardless of what its status or citizenship may be elsewhere.

This case and cases following it are the basis of petitioner's argument that there is an inconsistency between allowing a citizen of State A to sue a corporation organized under the laws of States A and B in State B, and not allowing the citizen of State A to sue in State A. Yet there is no inconsistency when it is realized that a corporation is domestic in each State where incorporated, and that the

citizenship in the forum both of the corporation and of the individual is what controls in each case. The Court in *Gavin* v. *Hudson & Manhattan R. Co.*, 185 F. (2d) 104, also was critical of the supposed inconsistency. In that case, however, it appears that the dislike of the Court for the fiction of corporate citizenship leads the Court to disregard the fact of incorporation in the State of the forum and the attributes that this fact gives the corporation in each State where it is incorporated, that is, that it is a domestic corporation in each State.

Again, in *Muller* v. *Dows*, 94 U.S. 444 (1876), there was a suit by citizens of New York and of Missouri against two railroad corporations averred to be citizens of Iowa in a United States Court in Iowa. The corporation resisted jurisdiction on the ground of Missouri incorporation. The Court held that there was diversity between the Missouri citizen and the Iowa corporation. The suit in Iowa was to be considered only as against the Iowa corporation. The Court said:

> "The two companies became one. But in the State of Iowa that one was an Iowa corporation, existing under the laws of that State alone."

In *Memphis & Charleston Railroad Co.* v. *Alabama*, 107 U.S. 581 (1882), the State sued the railroad in a State Court. The railroad removed to the Federal Court, which remanded for lack of jurisdiction, since the railroad was also an Alabama corporation. This Court held that, there being no diversity, the case was properly remanded, and said:

> "The defendant, being a corporation of the State of Alabama, has no existence in this State as a legal entity or person, except under and by force of its incorporation by this State; and, although also incorpo-

> rated in the State of Tennessee, must, *as to all its doings within the State of Alabama, be considered a citizen of Alabama, which cannot sue or be sued by another citizen of Alabama in the courts of the United States.*" (Emphasis added.)

This case is identical in principle to the case at bar. The only difference in fact is that the railroad in Alabama was seeking jurisdiction in the Federal Court, while in Massachusetts a railroad is objecting to jurisdiction. If jurisdiction is lacking on removal, it is lacking when the plaintiff chooses the Federal Court in the first instance.

In *Patch* v. *Wabash Railroad Co.*, 207 U.S. 277 (1907), suit was brought in a State Court in Illinois by an administrator appointed by an Illinois Court. The railroad sought to remove to the Federal Court on the ground that it was an Ohio corporation. The plaintiff filed a plea alleging that the railroad was incorporated in Illinois as well as in other states. This Court held that the suit should be remanded to the State Court. The Court said (p. 283):

> "Therefore the question is raised how a corporation or corporations thus organized shall be regarded for the purposes of a suit like this. No nice speculation as to whether the corporation is one or many, and no details as to the particulars of the consolidation, are needed for an answer. The defendant exists in Illinois by virtue of the laws of Illinois. It is alleged to have incurred a liability under the laws of the same State, and is sued in that State. It cannot escape the jurisdiction by the fact that it is incorporated elsewhere."

This decision appears to stand as the last one in which this Court has fully considered the question of multiple incorporation. (Cf. *Missouri Pacific Railway Co.* v. *Castle*,

224 U.S. 541 (1912), and *Baltimore & Ohio Railroad* v. *Parkersburg*, 268 U.S. 35 (1925), where the question came in only incidentally.) The language of the Court remains unimpaired and has been followed and applied by the lower Courts in denying jurisdiction in many cases where corporations incorporated in the State of plaintiff's residence have been sued in the Federal Courts.

The Courts of Appeals and the District Courts have consistently denied jurisdiction in cases similar to the case at bar until the Court of Appeals in the Third Circuit decided the *Gavin* case the other way. There are reported cases in the First, Second, Fourth, Seventh and Eighth Circuits.

Seavey v. *B. & M. R.R.*, 197 F. (2d) 485 (C.A. 1, 1952).

Geffroy v. *N.Y., N.H. & H. R.R. Co.*, 13 F. (2d) 947 (D.C. R.I. 1926); affd. 16 F. (2d) 1017 (C.C.A. 1, 1927).

Peterborough v. *B. & M. R.R.*, 239 Fed. 97 (C.C.A. 1, 1917).

Lucas v. *N.Y.C. R. Co.*, 88 F.S. 536 (D.C. N.Y. 1950).

Murphy v. *Hudson & Manhattan R. Co.*, 45 F.S. 720 (D.C. N.Y. 1942).

Town of Bethel v. *Atlantic Coast Line R. Co.*, 81 F. (2d) 485 (C.C.A. 4, 1936); cert. den. 298 U.S. 682.

Starke v. *N.Y. C. & St. L. R. Co.*, 180 F. (2d) 569 (C.A. 7, 1950).

Missouri Pacific R. Co. v. *Meeh*, 69 Fed. 753 (C.C.A. 8, 1895).

The petitioner contends that the cases hereinafter discussed support jurisdiction.

Ohio & Mississippi Railroad Co. v. *Wheeler*, 1 Black, 286 (1861):

This case has been referred to earlier in this brief as clearly indicating a lack of jurisdiction.

Nashua & Lowell Railroad Corp. v. *Boston & Lowell Railroad Corp.*, 136 U.S. 356 (1890):

The petitioner may well get some comfort from this case. The plaintiff railroad was organized both in New Hampshire and in Massachusetts and was suing a Massachusetts corporation. A divided Court held that there were two separate corporations and that the New Hampshire corporation could sue as a foreign corporation in Massachusetts even though there was another corporation in Massachusetts with the same name and stockholders. This decision seems to rest upon the principle that the two corporations were entirely separate, each a distinct entity in its own State, and that the New Hampshire corporation could sue in Massachusetts as a separate and distinct entity from the Massachusetts corporation. This case seems to stand by itself and can perhaps be explained by the unusual corporate structure discussed at length by the Court. In any event, it hardly seems to follow that the case is authority for the proposition that a citizen of Massachusetts can sustain jurisdiction in the Federal Court in Massachusetts for a wrong alleged to have been committed by the domestic corporation in Massachusetts, merely by alleging that she is suing the corporation as an entity of another State.

St. Louis & San Francisco Railway Co. v. *James*, 161 U.S. 545 (1896):

Here a Missouri citizen was suing a Missouri corporation in the Federal Court in Arkansas. Defendant denied

that it was an Arkansas corporation as alleged. The Court held that diversity was lacking, since the Arkansas statute did not create a separate corporation, but merely permitted the Missouri corporation to do business under the laws of Arkansas. The case may be distinguished in that there was no true corporate existence in the State of the forum. (Cf. *Patch* v. *Wabash Railroad Co.*, 207 U.S. 277, 284 (*supra*), where the Court distinguishes this case and others of the same nature.)

Southern Railway Co. v. *Allison*, 190 U.S. 326 (1903):

This was a removal from the State Court in North Carolina to the Federal Court on the ground that the railroad was a Virginia corporation. The removal was sustained on authority of *St. Louis & San Francisco Railway Co.* v. *James* (*supra*), since the South Carolina statute merely permitted the railroad to do business in South Carolina.

Louisville, New Albany & Chicago Railway Co. v. *Louisville Trust Co.*, 174 U.S. 552 (1899):

This suit was brought in Kentucky by a corporation alleged to be an Indiana corporation against a Kentucky corporation. The jurisdiction was challenged on the ground that the railroad was also a Kentucky corporation. The Court upheld jurisdiction, holding that the Kentucky statute was merely an enabling statute authorizing a corporation of another State to do business.

The effect of the argument which the petitioner here advances would be to give the Federal Courts jurisdiction based on diversity in all actions by or against corporations organized in more than one State, subject only to the limitation of the statutory amount of $3000.

This the respondent submits is unsound in principle and contrary to the decisions of this Court.

Point II.

This is Not an Action Arising "under the Constitution, Laws or Treaties of the United States" (28 U.S.C. sec. 1331).

The petitioner in her amended complaint alleges a violation of the Safety Appliance Act (45 U.S.C. sec. 1 *et seq.*) and contends that this gives the United States District Court jurisdiction in this action.

The various counts in the amended complaint, however, set forth causes of action under the Massachusetts Death Statute (Mass. G.L. (Ter. Ed.) c. 229, as amended) with additional counts at common law for conscious suffering. There are allegations in some of the counts which might be construed as violation of the Safety Appliance Act as the basis of negligence.

This Court has held in several cases that the Safety Appliance Act does not create any independent right of action, and does not by its terms give jurisdiction to the Federal Courts.

That Act is a penal statute wherein certain requirements as to equipment of rail carriers are prescribed and penalties provided for failure to maintain the standards prescribed. It is intended primarily but not exclusively for the protection of employees. Even for employees, no separate cause of action is provided by any of its terms.

The effect of the Act was considered in *Gilvary* v. *Cuyahoga Valley Railway Co.*, 292 U.S. 57, 61, where the Court said:

> "A violation of the Acts is a breach of duty owed to an employee, whether he is at the time engaged in

interstate or in intrastate commerce. And by abolishing assumption of risk the Acts impliedly recognize the right to recover for injuries resulting therefrom. But the absence of a declaration similar to that in the Federal Employers Liability Act, which denounces contracts and other arrangements made for the purpose of exempting carriers from liability created by that Act (45 U.S.C., § 55), strongly suggests a lack of legislative purpose to create any cause of action therefor. Moreover, if there had been such purpose, Congress probably would have included provisions in respect of venue, jurisdiction of courts, limitations, measure of damages, and beneficiaries in case of death."

And further (from the same opinion):

". . . while they prescribe the duty, the right to recover damages sustained by the injured employee through the breach 'sprang from the principle of the common law' and was left to be enforced accordingly, or in case of death 'according to the applicable statute.'"

The nature of the Act was again considered in the recent case of *Urie* v. *Thompson*, 337 U.S. 163, 188, where the Court said:

"But by its own terms the Boiler Inspection Act, like the Safety Appliance Acts, does not purport to confer any right of action upon injured employees. It merely makes violation of its prohibitions 'unlawful.'"

And further (in the same opinion at p. 189):

". . . the Boiler Inspection and Safety Appliance Acts cannot be regarded as statutes wholly separate

from and independent of the Federal Employers' Liability Act. They are rather supplemental to it, having the purpose and effect of facilitating employee recovery, not of restricting such recovery or making it impossible."

In *Moore* v. *Chesapeake & Ohio Railway Co.*, 291 U.S. 205, 214; 78 L. Ed. 755, 761, one of the jurisdictional questions considered was whether the Safety Appliance Act itself provided any right of action to an employee. The Court held that it did not do so, but that the right of action was based upon the law of Kentucky, even though a breach of duty might be shown under the Federal Safety Appliance Act. The Court held that jurisdiction in such cases must be based on diversity alone, which was present in that case. At page 214 the Court said:

". . . it does not follow that a suit brought under the state statute which defines liability to employees who are injured while engaged in intrastate commerce, and brings within the purview of the statute a breach of the duty imposed by the federal statute, should be regarded as a suit arising under the laws of the United States and cognizable in the federal court in the absence of diversity of citizenship. The Federal Safety Appliance Acts, while prescribing absolute duties, and thus creating correlative rights in favor of injured employees, did not attempt to lay down rules governing actions for enforcing these rights."

Speaking of the situation in the absence of the Federal Employers' Liability Act, the Court says (at pages 215-216):

"The Safety Appliance Acts having prescribed the duty in this fashion, the right to recover damages sustained by the injured employee through the breach

of duty sprang from the principle of the common law (*Texas & Pacific R. Co.* v. *Rigsby, supra,* [241 U.S.] 39, 40) and was left to be enforced accordingly, or, in case of the death of the injured employee, according to the applicable statute."

Minneapolis, St. Paul & Sault Ste. Marie Railway Co. v. *Popplar,* 237 U.S. 369.

The respondent submits that, even though the violation of the Safety Appliance Act might be used as evidence of negligence in a death action brought under the State law, there would be no jurisdiction in the Federal District Court.

This Court has held that to establish jurisdiction in a Federal Court a United States statute must be the source of the right and not merely incidental to it.

Fairport, Painesville & Eastern Railroad Co. v. *Meredith,* 292 U.S. 589, 597 (1934).

Gully v. *First National Bank in Meriden,* 299 U.S. 109.

Puerto Rico v. *Russell & Co.,* 288 U.S. 476.

In *Fairport, Painesville & Eastern Railroad Co.* v. *Meredith,* 292 U.S. 589 (1934), the case had been tried in a State Court, and the question on certiorari was whether a traveler on a highway could claim the benefit of the Federal Safety Appliance Act. The Court held that, while the plaintiff was entitled to the benefit of the Act as establishing a duty, the right to enforce the liability arising from violation of the duty was derived from the common law.

In *Puerto Rico* v. *Russell & Co.,* 288 U.S. 476 (1933), the Court, speaking of a different statute, stated the rule as to jurisdiction as follows (p. 483):

"Federal jurisdiction may be invoked to vindicate a right or privilege claimed under a federal statute.

> It may not be invoked where the right asserted is non-federal, merely because the plaintiff's right to sue is derived from federal law, or because the property involved was obtained under federal statute. The federal nature of the right to be established is decisive—not the source of the authority to establish it."

The comment of this Court in *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 339 U.S. 667, 673, seems to answer petitioner's comment as to congressional intent:

> "With exceptions not now relevant Congress has narrowed the opportunities for entrance into the federal courts, and this Court has been more careful than in earlier days in enforcing these jurisdictional limitations. See *Gully* v. *First National Bank*, [299 U.S. 109] at 113."

The respondent respectfully submits that the petitioner has failed to establish any ground for jurisdiction based upon an action arising under the Constitution, laws or treaties of the United States.

Conclusion.

The respondent respectfully urges that the petition be denied.

Respectfully submitted,

PAUL F. PERKINS,

NOEL W. DEERING,

Attorneys for the Respondent.

Appendix.

COMMONWEALTH OF MASSACHUSETTS.
ACTS OF 1872, CHAPTER 171.

AN ACT to authorize the Hartford and New Haven Railroad Company to consolidate with the New York and New Haven Railroad Company.

SECTION 1. The Hartford and New Haven Railroad Company may sell, transfer, merge and consolidate its corporate rights, powers and estate to, into and with the New York and New Haven Railroad Company, upon such considerations, terms, stipulations and conditions as may be agreed upon between said corporations and as are authorized by the provisions of this act.

SECTION 2. The directors of said corporation may enter into proper agreements for the sale, transfer, purchase and merger hereby authorized, prescribing the terms and conditions thereof, the mode of effecting such transfer, merger and consolidation, and the number of directors thereof, one or more of whom shall be citizens of this Commonwealth, the amount of the capital stock of such consolidated corporation, which shall not exceed the present capital of said companies, the manner of converting the capital stock of said original corporations into the capital stock of said consolidated corporation, and such other matters and things as may be necessary or proper to effect the purposes and merger aforesaid: *provided, however,* that such agreement of the directors herein before authorized shall be submitted to the stockholders of each of said corporations separately, at meetings specially called for that purpose, and, if approved by a vote of at least two-thirds of the stock represented at each of said meetings, said agreement so to be made by said directors shall become the agreement of said corporations respectively, and a certified copy thereof, together with a certificate of the adoption

thereof by the stockholders of said respective corporations, under the hand of the secretary of each of said corporations, shall be filed in the office of the secretary of this Commonwealth.

SECTION 3. Upon the filing of such certificate said companies shall become and be merged and consolidated into one corporation, under the name of the New York, New Haven and Hartford Railroad Company, and shall become and be a body politic and corporate, and shall possess, hold and enjoy all the rights, powers, franchises and privileges, theretofore vested in either of said corporations, and all property, real and personal, of said companies, shall be deemed to be vested in said consolidated corporation.

SECTION 4. All rights of creditors and all liens upon the property of either of said corporations shall continue unimpaired, and all debts, contracts and liabilities of either of said corporations shall continue unimpaired, and shall attach to and become binding upon such consolidated company, and may be enforced in the same manner and to the same extent as if incurred by said latter corporation, and in the courts of Massachusetts in all cases in which the claimants shall so elect.

SECTION 5. Said consolidated corporation shall be subject to the charter of the corporation into which such merger is made: *provided, however,* that when a special duty or liability is imposed, or any special franchise, privilege or immunity is conferred on the corporation so merged by its charter, such duty or liability shall attach to and be discharged by, and such franchise, immunity or privilege be enjoyed by such consolidated corporation, so far as the same is applicable to the road and franchise of said merged corporation.

SECTION 6. Said consolidated corporation shall ticket passengers, check baggage, way-bill freight, transfer cars and give full and equal facilities for the convenient trans-

fer of passengers, baggage and freight, to and from all connecting railroads, and shall make no unequal discrimination for or against either of such railroads, or any railroad that may at any time meet or connect with the said consolidated railroad.

SECTION 7. Said consolidated corporation shall at all times be subject to the legislature of this state as to that portion of its road in this state, as heretofore; and shall be subject to the general laws of this state as to its whole road so far as such laws may be applicable thereto.

SECTION 8. The provisions of the eleventh section of the charter of the New York and New Haven Railroad Company shall remain in force and apply to that portion of the road of the consolidated company which is now the New York and New Haven Railroad, and, for the purposes contemplated in that section, the portion of the consolidated road which is now the Hartford and New Haven Railroad, shall forever be considered a connecting road.

SECTION 9. This act and any act regarding the said consolidated corporation shall be subject to alteration, modification or repeal by the legislature.

SECTION 10. This act shall take effect upon its passage.